

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA 106-FOA; FRL-]

Approval and Promulgation of Implementation Plans and
Determination of Attainment of the 1-Hour Ozone Standard
for the San Francisco Bay Area, California, and Determination
Regarding Applicability of Certain Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the San Francisco Bay Area has attained the 1-hour ozone air quality standard by the deadline required by the Clean Air Act. Based on this proposal, we also propose to determine that the CAA's requirements for reasonable further progress, attainment demonstration, and contingency provisions are not applicable to the area for so long as the Bay Area continues to attain the 1-hour ozone standard.

DATES: Comments on this proposal must be received by [insert date 30 days after publication].

ADDRESSES: Please address your comments to:

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U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA
94105-3901 or e-mail to vagenas.ginger@epa.gov, or submit
comments at <http://www.regulations.gov>.

Copies of the docket for this rulemaking are available for public inspection during normal business hours at EPA's Region 9 office.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Attainment Finding**A. Bay Area's Ozone Designations and State Implementation Plans**

When the Clean Air Act (CAA) Amendments were enacted in 1990, each area of the country that was designated nonattainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS), including the San Francisco Bay Area ("Bay Area"), was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality

problem.¹ CAA sections 107(d)(1)(C) and 181(a). The Bay Area was classified as moderate. See 56 FR 56694 (November 6, 1991).

EPA redesignated the Bay Area to attainment in 1995, based on then current air quality data (60 FR 27029, May 22, 1995), and subsequently redesignated the area back to nonattainment without classification on July 10, 1998 (63 FR 37258), following renewed violations of the 1-hour ozone standard. Upon the Bay Area's redesignation to nonattainment, we required the State to submit a state implementation plan (SIP) addressing applicable CAA provisions, including a demonstration of attainment as expeditiously as practicable but no later than November 15, 2000.

The Bay Area Air Quality Management District (BAAQMD), along

¹The 1-hour ozone nonattainment area is the "San Francisco-Bay Area," which comprises Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara Counties, and portions of Solano and Sonoma Counties. See 40 CFR 81.305. (http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr81_00.html)

EPA's 1-hour ozone standard of 0.12 ppm was promulgated in 1979 (44 FR 8202, February 8, 1979). On July 18, 1997, we promulgated a revised ozone standard of 0.08 ppm, measured over an 8-hour period. In general, the 8-hour standard is more protective of public health and more stringent than the 1-hour standard. This proposed finding addresses only the 1-hour standard. Areas will be designated attainment or nonattainment for the 8-hour standard in 2004.

Ground-level ozone can irritate the respiratory system, causing coughing, throat irritation, and uncomfortable sensations in the chest. Ozone can also reduce lung function and make it more difficult to breathe deeply, thereby limiting a person's normal activity. Finally, ozone can aggravate asthma and can inflame and damage the lining of the lungs, leading to permanent changes in lung function. More details on ozone's health effects and the ozone NAAQS can be found at the following web site: http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html

with its co-lead agencies--the Metropolitan Transportation Commission and the Association of Bay Area Governments--prepared a 1-hour ozone attainment plan, which was submitted by the California Air Resources Board (CARB) on August 13, 1999. On September 20, 2001 (66 FR 48340), we approved the emissions inventories, reasonable further progress (RFP) provisions, control measure commitments, and contingency measures. In the same rulemaking, we disapproved the remaining portions of the SIP--the attainment demonstration, reasonably available control measure (RACM) provision--issued a finding that the area failed to attain by the applicable deadline, and set a new attainment deadline of "as expeditiously as practicable" but no later than September 20, 2006.

On November 30, 2001, CARB submitted the Bay Area's 2001 Plan, addressing the new attainment deadline.² On July 16, 2003 (68 FR 42174), we proposed to approve the following elements of the 2001 Plan: attainment assessment, motor vehicle emissions budgets, and commitments to adopt control measures and to adopt and submit a plan revision by April 15, 2004, based on new modeling. On the same date, we issued an interim final determination that the 2001 Plan corrects the deficiencies in the 1999 Plan, thereby staying the CAA section 179 offset sanction

²An electronic copy of the plan is available at <http://www.baaqmd.gov/planning/2001sip/2001sip.htm> and at the BAAQMD offices at 939 Ellis Street, San Francisco, CA 94105.

and deferring the imposition of the highway sanction triggered by our September 20, 2001 disapproval. 68 FR 42172.

On October 16, 2003, William C. Norton, Executive Officer of the BAAQMD, sent a letter to Catherine Witherspoon, CARB Executive Officer, reporting that the Bay Area has attained the national 1-hour ozone standard and stating that, based on the monitoring data, a finding of attainment would be appropriate. Mr. Norton also stated that: "We are continuing our air quality planning and rule development work in order to achieve additional reductions in ozone precursor emissions. We want to reduce local ozone and transport, and to maintain progress toward the state standard. The District's and ARB's staffs have been working intensively on the modeling and rule review phases of our mid-course review for the 2004 ozone planning process."

On October 21, 2003, CARB formally requested that we make a finding of attainment for the 1-hour ozone NAAQS for the Bay Area (letter from Catherine Witherspoon to Wayne Nastri, Regional Administrator, EPA Region 9). The CARB letter endorsed the BAAQMD's commitment to continue to reduce ozone precursor emissions in order to ensure progress toward attaining the national 8-hour ozone standard in the Bay Area and downwind areas, the more protective State ozone standard, and the national fine particulate matter (PM_{2.5}) standards.

B. Clean Air Act Provisions for Attainment Findings

Under CAA section 181(b)(2)(A), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the standard, basing our determination on the area's design value as of its applicable attainment date. Although the Bay Area is not subject to this provision and the attainment deadline for the area has not yet been reached, we are making an attainment finding based on the Bay Area's current air quality data and design value, which is in attainment of the 1-hour ozone NAAQS.

The 1-hour ozone NAAQS is 0.12 ppm, not to be exceeded on average more than 1 day per year over any 3-year period. 40 CFR 50.9 and appendix H. Under our policies, we determine if an area has attained the 1-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding 3-year period.³ For this proposal, we have based our determination of attainment on both the design value and the average number of exceedance days per year for the period 2001 through 2003.

³See generally 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas," February 3, 1994 (http://www.epa.gov/ttn/oarpg/t1/memoranda/o_bump.pdf). While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same procedures.

The design value is an ambient ozone concentration that indicates the severity of the ozone problem in an area and is used to determine the level of emission reductions needed to attain the standard, that is, it is the ozone level around which a state designs its control strategy for attaining the ozone standard. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area's design value is the highest of the design values from the area's monitors.⁴

We make attainment determinations for ozone nonattainment areas using all available, quality-assured air quality data for the current or applicable 3-year period.⁵ Consequently, we used

⁴ The fourth highest value is used as the design value because a monitor may record up to 3 exceedances of the standard in a 3-year period and still show attainment, since 3 exceedances over 3 years would average 1 day per year, the maximum allowed to show attainment of the 1-hour ozone standard. If the monitor records a fourth exceedance in that period, it would average more than 1 exceedance day per year and would no longer show attainment. Therefore, if a state can reduce the fourth highest ozone value to below the standard, thus preventing a fourth exceedance, then it will be able to demonstrate attainment.

⁵This includes all data that are available from the state and local/national air monitoring station (SLAMS/NAMS) network as submitted to EPA's Aerometric Information Retrieval System-Air Quality Subsystem (AIRS-AQS) database and certified as final. Also included are all data available to EPA from special purpose monitoring (SPM) sites that meet the requirements of 40 CFR 51.18. See Memorandum dated August 22, 1997, from John Seitz to Regional Air Directors, entitled "Agency Policy on the Use of Ozone Special Purpose Monitoring Data" (<http://www.epa.gov/ttn/amtic/files/ambient/criteria/spms3.pdf>). Monitoring data for the 2003 ozone season must be certified by the BAAQMD prior to publication of the final attainment finding.

all of the 2001, 2002, and 2003 data available to determine whether the Bay Area attained the 1-hour ozone standard by the end of the 2003 ozone season. From the available air quality data, we have calculated the average number of days over the standard and the design value for each ozone monitor in the Bay Area nonattainment area.

C. Attainment Finding for the Bay Area

1. Adequacy of the Bay Area Ozone Monitoring Network

Determining whether or not an area has attained under CAA section 181(b)(1)(A) is based on monitored air quality data. Thus, the validity of a determination of attainment depends on whether the monitoring network adequately measures ambient ozone levels in the area.

We evaluate 4 basic elements in determining the adequacy of an area's ozone monitoring network. The network needs to meet the design requirements of 40 CFR part 58, appendix D; the network needs to utilize monitoring equipment designated as reference or equivalent methods under 40 CFR part 53; the agency or agencies operating the equipment need to have a quality assurance plan in place that meets the requirements of 40 CFR part 58, appendix A; and, for urban areas with populations greater than 200,000, at least two monitoring sites must be designated as National Air Monitoring Stations (NAMS). The ozone network in the Bay Area meets or exceeds these requirements and

is therefore adequate for use in determining the ozone attainment status of the area.⁶

2. The Bay Area's Ozone Design Value for the 2001-2003 Period

We have listed in Table 1 the design values and the average number of exceedance days per year for the 2001 to 2003 period for each monitoring site in the Bay Area. We calculated the design values following the procedures in the Laxton memo.⁷ We have used the established rounding conventions set forth in our guidance documents and regulations.⁸

⁶These requirements are addressed in "System Audit of the Ambient Monitoring Program of Bay Area Air Quality Management District, November 26-30, 2001." The system audit report is included in the docket for this rulemaking.

⁷See memorandum, William G. Laxton, Director, Technical Support Division, Office of Air Quality Planning and Standards to Regional Air Directors, "Ozone and Carbon Monoxide Design Value Calculations," June 18, 1990 (<http://www.epa.gov/oar/oaqps/greenbk/laxton.html>).

⁸Although the 1-hour ozone NAAQS itself includes no discussion of specific data handling conventions, our publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 parts per million (ppm). 40 CFR 50.9(a) states that: "The level of the national 1-hour primary and secondary ambient air quality standards for ozone...is 0.12 parts per million.... The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million...is equal to or less than 1, as determined by appendix H to this part." (http://a257.g.akamaitech.net/7/257/2422/08aug20031600/edocket.access.gpo.gov/cfr_2003/julqtr/pdf/40cfr50.9.pdf) We have clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents, as discussed below. In the 1990 CAA Amendments, Congress expressly recognized the

Table 1 - Average Number of 1-Hour Ozone Exceedance Days per Year and Design Values by Monitor in the Bay Area, 2001-2003		
Site	Average Number of Exceedance Days per Year	Site Design Value (ppm)
Bethel Island (SLAMS)	0.3	0.102
Concord (NAMS)	0.3	0.106
Crockett (SPM)	0	0.081
Fairfield (SLAMS)	0	0.101
Fremont (NAMS)	0	0.106
Gilroy (SLAMS)	0	0.116
Hayward (SLAMS)	0	0.097
Livermore (NAMS)	1.0	0.123
Los Gatos (NAMS)	0	0.113
Napa (SLAMS)	0	0.099
Oakland (SLAMS)	0	0.069
Oakland - Fruitvale (SPM)	0	0.068

continuing validity of EPA guidance.

As early as 1977, EPA issued guidance that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded. Guidelines for the Interpretation of Air Quality Standards, OAQPS No. 1.2-008, February 1977

(<http://www.epa.gov/ttn/amtic/files/ambient/criteria/reldocs/12008-77.pdf>). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data. "The air quality concentration should be rounded to the number of significant digits used in specifying the concentration intervals. The digit to the right of the last significant digit determines the rounding process. If this digit is greater than or equal to 5, the last significant digit is rounded up. The insignificant digits are truncated. For example, 100.5 ug/m³ rounds to 101 up/m³ and 0.1245 ppm rounds to 0.12 ppm." 40 CFR part 58, appendix F, 2 Required Information.

(http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr58_00.html)

Pittsburg (SLAMS)	0	0.103
Redwood City (SLAMS)	0	0.090
San Francisco (SLAMS)	0	0.061
San Jose Central (SLAMS)	0	0.099
San Jose East (SLAMS)	0	0.091
San Leandro (SLAMS)	0	0.093
San Martin (SLAMS)	0	0.115
San Pablo (SLAMS)	0	0.071
San Rafael (SLAMS)	0	0.077
Santa Rosa (SLAMS)	0	0.086
Sunnyvale (SLAMS)	0	0.096
Vallejo (SLAMS)	0	0.091
Note: Each of these sites is operated by BAAQMD, except for the SPM sites, which are operated by CARB. All data are reported to EPA's AIRS-AQS database.		

From Table 1, it is apparent that the highest design value at any monitor, and thus the design value for the Bay Area, is 0.123 ppm at the Livermore site. No monitor in the Bay Area recorded an average of more than 1 exceedance of the 1-hour ozone standard per year during the 2001 to 2003 period.

Because the area's design value is below the 0.12 ppm 1-hour ozone standard for the 2001 to 2003 period, we propose to find that the Bay Area has attained the 1-hour ozone standard.

D. Attainment Findings and Redesignations to Attainment

A finding that an area has attained the 1-hour ozone standard does not redesignate the area to attainment for the 1-hour standard nor does it guarantee a future redesignation to attainment.

The redesignation of an area to attainment under CAA section 107(d)(3)(E) is a separate process from a finding of attainment. Unlike an attainment finding where we need only determine that the area has had the pre-requisite number of clean years, a redesignation requires multiple determinations. Under section 107(d)(3)(E), these determinations are:

1. We must determine, at the time of the redesignation, that the area has attained the relevant NAAQS.
2. The state must have a fully approved SIP for the area.
3. We must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal regulations and other permanent and enforceable reductions.
4. We must have fully approved a maintenance plan for the area under CAA section 175A.
5. The state must have met all the nonattainment area requirements applicable to the area.

It is possible, although not expected, that the Bay Area could violate the 1-hour ozone NAAQS before a maintenance plan is adopted, submitted, and approved, and the area is redesignated to attainment. If such a violation were to occur after our finding of attainment, and if expedited implementation of contingency measures were to prove insufficient to eliminate future violations, we believe that issuance of a SIP call under Section

110(k)(5) would be an appropriate response. This SIP call could require the State to submit, by a reasonable deadline not to exceed 18 months, a revised plan demonstrating expeditious attainment and complying with other requirements applicable to the area at the time of this finding.

In proposed implementation guidance for the 8-hour ozone NAAQS, we have also discussed other options for areas that have attained the 1-hour ozone standard but subsequently violate the 1-hour NAAQS in the transition period before implementation of the 8-hour ozone SIP provisions. EPA's final guidance may establish approaches for ensuring continued clean air progress while minimizing any inefficiencies and diversions of air quality planning resources.

II. Applicability of Clean Air Act Planning Requirements

A. EPA's Policy and its Legal Basis

When we redesignated the Bay Area back to nonattainment, we concluded that the Bay Area became subject to the provisions of subpart 1 rather than subpart 2 of the Clean Air Act. 63 FR 37258 (July 10, 1998). CAA subpart 1 at section 172(c) requires states to submit plans with certain revisions. These provisions include: emissions inventories, attainment demonstration, reasonable further progress (RFP), reasonably available control measures (RACM), contingency measures, and new source review (NSR).

For the reasons described below and discussed in our Ozone Clean Data Policy, we believe that it is reasonable to interpret the CAA not to require the 3 provisions discussed below for ozone nonattainment areas that are determined to be meeting the 1-hour ozone standard.⁹

1. Reasonable Further Progress

CAA Section 171(1) states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, the stated purpose of RFP is to ensure attainment by the applicable attainment date. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been

⁹See memorandum, John S. Seitz, Director, OAQPS, EPA, to Regional Air Directors, "Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," May 10, 1995.

<http://www.epa.gov/ttn/oarpg/t1/memoranda/clean15.pdf>) We have also explained at length in other actions our rationale for the reasonableness of this interpretation of the Act and incorporate those explanations by reference here. See 61 FR 20458 (May 7, 1996) (Cleveland-Akron-Lorain, Ohio); 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah); 60 FR 37366 July 20, 1995) and 61 FR 31832-31833 (June 21, 1996) (Grand Rapids, MI); and 65 FR 31859 (May 19, 2000) and 66 FR 29230 (May 30, 2001) (Phoenix, Arizona). Our interpretation has also been upheld by the United States Court of Appeals for the 10th Circuit in *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996) (<http://www.law.emory.edu/10circuit/nov96/95-9541.wpd.html>).

fulfilled.

Consequently, we do not believe that a state needs to submit revisions providing for the further emission reductions to meet the RFP provisions of section 172(c)(2) for areas meeting the 1-hour ozone standard. We note that we took this view with respect to the general RFP requirement of section 172(c)(2) in our "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990" at 57 FR 13498 (April 16, 1992). In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR 13564.) See also "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992 ("Calcagni memo") (<http://www.epa.gov/ttn/naags/ozone/ozonetech/940904.pdf>). The memo states that the "requirements for reasonable further progress...will not apply for redesignations because they only have meaning for areas not attaining the standard" (page 6).

2. Attainment Demonstration

Analogous reasoning applies to the attainment demonstration requirement. Section 172(c)(1) requires that a state submit a SIP revision that will provide for attainment of the NAAQS. If an area has in fact monitored attainment of the standard based on existing controls, we believe that it is not necessary for the state to make a further submission containing additional measures or demonstrations to show attainment.

This belief is also consistent with our interpretation of certain section 172(c) requirements in the General Preamble to Title I, where we stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR 13564; see also Calcagni memo at page 6.)

Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

3. Contingency Measures

CAA section 172(c)(9) requires a state to submit contingency measures that will be implemented if an area fails to make RFP or fails to attain by the applicable attainment date. We have previously interpreted the contingency measure requirement of section 172(c)(9) as no longer applying once an area has attained the standard since those "contingency measures are directed at

ensuring RFP and attainment by the applicable date." See 57 FR 13564; see also the Calcagni memo at page 6.

4. Remaining Nonattainment Area SIP Requirements

A number of CAA subpart 1 SIP requirements for nonattainment areas are not tied to whether the area has attained the 1-hour standard. The State remains obligated to submit these requirements for the Bay Area even if we finalize today's proposed determination that the area has attained the 1-hour standard and that the CAA planning requirements discussed above no longer apply to the area. These requirements include: a current, comprehensive, and accurate emission inventory of actual emissions (section 172(c)(3)); reasonable available control measures (section 172(c)(1)); and an NSR program (sections 172(c)(5) and 173(a). When we take final action on this finding of attainment, we intend to take final action on the 2001 Plan, including whether the emissions inventories and control measures in the plan satisfy the applicable subpart 1 requirements. We have previously acted on the Bay Area's NSR program. See, for example, 65 FR 56284 (September 18, 2000).

B. Effects of the Proposed Determination on the Bay Area and Effects of a Future Violation on this Proposed Determination

If we finalize today's proposed determinations for the Bay Area, then the State will no longer be required to submit an RFP plan, an attainment demonstration, or contingency measures for

the area. Any sanction clocks under CAA section 179(a) or requirements that we promulgate a federal implementation plan under CAA section 110(c) for these SIP requirements are suspended.

The suspension of the requirement to submit these SIP revisions and the suspension of sanction clocks/FIP requirements will exist only as long as the Bay Area continues to attain the 1-hour ozone standard. If we subsequently determine that the Bay Area has violated the 1-hour ozone standard (prior to a redesignation to attainment), the basis for the determination that the area need not make these SIP revisions would no longer exist. Thus, a determination that an area need not submit these SIP revisions amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

Should the Bay Area begin to violate the 1-hour standard, we will notify the State that we have determined that the area is no longer attaining the 1-hour standard. We also will provide notice to the public in the Federal Register, and we will at that time indicate what pertinent SIP provisions apply and when a SIP revision addressing those provisions must be submitted.

California must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data

relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance.

C. Effect of the Proposed Determination on Transportation Conformity

CAA section 176(c) requires that federally funded or approved transportation actions in nonattainment areas "conform" to the area's air quality plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards.

One of the primary tests for conformity is to show that transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and to meet the air quality standards. These motor vehicle emissions levels are set in an area's attainment, maintenance and/or RFP demonstrations and are known as the "transportation conformity budgets."

We found the motor vehicle emissions budgets in the 2001 Plan adequate on February 14, 2002. 67 FR 8017 (February 21, 2002). A finding that the Bay Area has attained the 1-hour standard and that the State no longer needs to submit attainment and RFP demonstrations will not affect the continued applicability of these budgets. If the attainment demonstration is withdrawn, however, the continued applicability of the budgets

could be affected.

III. Summary of EPA Actions

We are proposing to find that the Bay Area has attained the 1-hour ozone NAAQS. We are also proposing to determine that certain CAA requirements (RFP, attainment assessment, and contingency measures) no longer apply to the Bay Area should the attainment finding be finalized.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to find that an area has attained a previously-established national ambient air quality standard based on an objective review of measured air quality data. It also proposed to determine that certain Clean Air Act requirements no longer apply to the Bay Area because of the attainment finding. If finalized, it would not impose any new regulations, mandates, or additional enforceable duties on any public, nongovernmental, or private entity. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to determine that an area has attained a Federal standard and thus is not subject to certain specific requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental

Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, and Wilderness areas.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: October 23, 2003

[signed]_____
Deborah Jordan,
Acting Regional Administrator,
Region IX.